

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JONATHAN M. ROBERTS,

Petitioner,

v.

**ORDER**  
07-CV-285S

SUPERINTENDENT OF THE ATTICA  
CORRECTIONAL FACILITY,

Respondent.

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1. On April 30, 2007, Petitioner commenced this action seeking federal habeas relief under 28 U.S.C. § 2254.

2. On February 8, 2008, this Court referred this matter to the Honorable Jeremiah J. McCarthy, United States Magistrate Judge, for all proceedings necessary for a determination of the factual and legal issues presented, and to prepare and submit a Report and Recommendation containing findings of fact, conclusions of law, and a recommended disposition of the case pursuant to 28 U.S.C. § 636(b)(1)(B).

3. In a Report and Recommendation filed on July 2, 2008, Judge McCarthy recommends that Petitioner's Petition for a Writ of Habeas Corpus be denied. No objections to the Report and Recommendation were received from either party within ten days from the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).<sup>1</sup>

4. This Court has carefully reviewed Judge McCarthy's Report and Recommendation, as well as the pleadings and materials submitted by the parties. After

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<sup>1</sup>This Court notes that the first copy of Judge McCarthy's Report and Recommendation sent to Petitioner at the Attica Correctional Facility was returned as undeliverable. This Court mailed a second copy of the Report and Recommendation to Petitioner at the Upstate Correctional Facility on July 14, 2008. The second mailing has not been returned.

due consideration, this Court finds no legal or material factual error in Judge McCarthy's Report and Recommendation. This Court will therefore accept Judge McCarthy's Report and Recommendation in its entirety.

IT HEREBY IS ORDERED, that this Court accepts Judge McCarthy's July 2, 2008 Report and Recommendation (Docket No. 17) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Petitioner's petition seeking federal habeas relief (Docket No. 1) is DENIED for the reasons set forth in the Report and Recommendation.

FURTHER, that because the issues raised in the petition are not the type that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, this Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly, a Certificate of Appealability is DENIED and shall not issue.

FURTHER, that this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith.

FURTHER, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: August 15, 2008  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge